

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TENTH STREET BUILDING)	
CORPORATION,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 03-359E
)	
BP PRODUCTS NORTH AMERICA)	
INC., f/k/a and successor to BP OIL)	
COMPANY, f/k/a and successor to)	
BORON OIL COMPANY, and DONALD)	
TRAPP,)	
Defendants)	ELECTRONICALLY FILED

ANSWER TO CROSSCLAIM ASSERTED BY DONALD TRAPP

Defendant BP Products North America Inc., successor by merger to BP Oil Company a/k/a Boron Oil Company (hereinafter "BP"), by its attorneys, MacDonald, Illig, Jones & Britton LLP, files this Answer to Crossclaim Asserted by Donald Trapp:

91. Denied as stated. To the contrary, on December 28, 1993, BP and Donald Trapp ("Trapp") entered into a Dealer Lease and Supply Agreement under which Trapp sublet the premises from BP and became a dealer, not an employee, of BP, and Trapp became the operator of the real property, buildings and improvements located at 3875 Peach Street, Erie, Pennsylvania 16509. BP and/or its predecessor did not direct the operations of the facility subsequent to December 28, 1993, except as stated in the Dealer Lease and Supply Agreement. Furthermore, on or about November 30, 1999, BP assigned all interest in the underlying Lease

between BP and Tenth Street Building Corporation to RAN Oil Company, LLC, and BP sold to RAN Oil Company, LLC certain equipment and buildings located at the subject premises, including underground storage tanks, waste oil tanks, gasoline lines and dispensers. It is unknown to this defendant at this time whether Trapp was an employee of BP or its predecessors at any time, but particularly from 1986 to December 28, 1993.

92. Denied. Upon information and belief, and assuming without admitting that there were any "releases in the tanks or piping" on the premises, said "releases" occurred after Trapp became a dealer and operator and was subject to the terms of the Dealer Lease and Supply Agreement dated December 28, 1993, and/or after BP assigned all interest in the underlying Lease between BP and Tenth Street Building Corporation to RAN Oil Company, LLC on or about November 30, 1999. It is unknown to this defendant at this time whether Trapp was an employee of BP or its predecessors at any time, but particularly from 1986 to December 28, 1993. It is admitted that the underground storage tanks were replaced in or about 1988. It is denied that BP failed to undertake proper mitigation and remediation at any time.

93. Denied.

94. Denied.

WHEREFORE, defendant BP Products North America Inc., successor by merger to BP Oil Company a/k/a Boron Oil Company demands that judgment be entered in its favor and against plaintiff Tenth Street Building Corporation, a Pennsylvania corporation with respect to the Complaint, and against defendant Donald Trapp with respect to the Crossclaim, together with costs of suit, attorneys fees as permitted by law, and such other relief as the Court deems appropriate.

Respectfully submitted,

s/Matthew W. McCullough

Matthew W. McCullough, Esquire

PA46950

Steven C. Beckman, Esquire

PA68972

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, PA 16507-1459

Phone: (814) 870-7600

Fax: (814) 454-4647

E-mail: mmccullough@mijb.com

Attorneys for Defendant

BP Products North America Inc., successor by merger to BP Oil Company a/k/a Boron Oil Company

Dated: October 25, 2005

915807